No. 19-0109

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED
Aug 16, 2019
DEBORAH S. HUNT, Clerk

In re: PROJECT VERITAS; MARISA L. JORGE,)	
aka Marissa Jorge, aka Marissa Perez,)	
)	<u>O R D E R</u>
Petitioners.)	

Before: NORRIS, SILER, and SUTTON, Circuit Judges.

The petitioners, the defendants in this action brought by Plaintiff AFT Michigan ("AFT"), petition under 28 U.S.C. § 1292(b) to appeal the partial denial of their motion to dismiss. AFT opposes the petition to appeal.

"This court in its discretion may permit an appeal to be taken from an order certified for interlocutory appeal if (1) the order involves a controlling question of law, (2) a substantial ground for difference of opinion exists regarding the correctness of the decision, and (3) an immediate appeal may materially advance the ultimate termination of the litigation." *In re City of Memphis*, 293 F.3d 345, 350 (6th Cir. 2002) (citing 28 U.S.C. § 1292(b)); *see also In re Trump*, 874 F.3d 948, 951 (6th Cir. 2017). "A legal issue is controlling if it could materially affect the outcome of the case." *City of Memphis*, 293 F.3d at 351. If the litigation will be conducted in substantially the same manner regardless of the decision on appeal, an appeal will not materially advance the termination of the case. *Id.* The statutory factors, however, "should be treated as *guiding criteria* rather than *jurisdictional* requisites." *In re Trump*, 874 F.3d at 951 (quotation omitted).

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The district court certified for an interlocutory appeal under § 1292(b) whether Michigan's eavesdropping statute prohibits a participant from recording, without the consent of all parties thereto, a private conversation. The Michigan Supreme Court has not addressed this question, which may be controlling as to some of the claims asserted below. The defendants have not demonstrated, however, that an immediate appeal will advance the termination of the litigation because the litigation is likely to proceed in substantially the same manner regardless of

Accordingly, the petition to appeal is **DENIED**. We decline to direct the district court to certify the question of law to the Michigan Supreme Court and express no opinion as to whether such a certification is warranted in this case.

its outcome.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Deborah S. Hunt Clerk 100 EAST FIFTH STREET, ROOM 540 POTTER STEWART U.S. COURTHOUSE CINCINNATI, OHIO 45202-3988

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Mr. Stephen Ralph Klein Statecraft 1629 K Street, N.W. Suite 300 Washington, DC 20006

Re: Case No. 19-109, *In re: Project Veritas, et al* Originating Case No. : 4:17-cv-13292

Dear Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Karen S. Fultz Case Manager Direct Dial No. 513-564-7036

cc: Mr. Mark Howard Cousens Mr. Paul Mathew Mersino Mr. Joshua Rosenthal Mr. David J. Weaver

Enclosure

No mandate to issue